

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 463 of 2003**

Siyabati, widow of Jhaduram Gond, aged about 35 years, Cultivator and resident of village Charbhatti, Tah. Narharpur, Distt. Kanker (C.G.)

---- Appellant/Plaintiff

Versus

1. Mehatar (died) through LR's.

1(a) Fulmat Bai, wd/o Late Mahetar, aged about 50 years,

1(b) Kuber, S/o Late Mahetar, aged about 26 years,

Both are R/o village Charbhatti, P.S. & Tahsil Narharpur, Civil & Revenue District Kanker (C.G.)

2. Shyam Singh, S/o Naval Gond, aged about 20 years,

3. Shyamlal, S/o Naval Gond, aged about 18 years,

4. Sagaroo, S/o Halalkhor Gond, aged about 30 years,

All residents of village Charbhatti, Tah. Narharpur, Distt. Kanker (C.G.)

5. State of Chhattisgarh, through : Collector, Kanker, Distt. Kanker (C.G.)

----Respondents/Defendants

For Appellant : Mr. Ramesh Kumar Sharma, Advocate.

For Respondents 1(a), 1(b) and 2 to 4

: None appeared, though served.

For Respondent No. 5 : Mr. Adhiraj Surana, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/10/2018

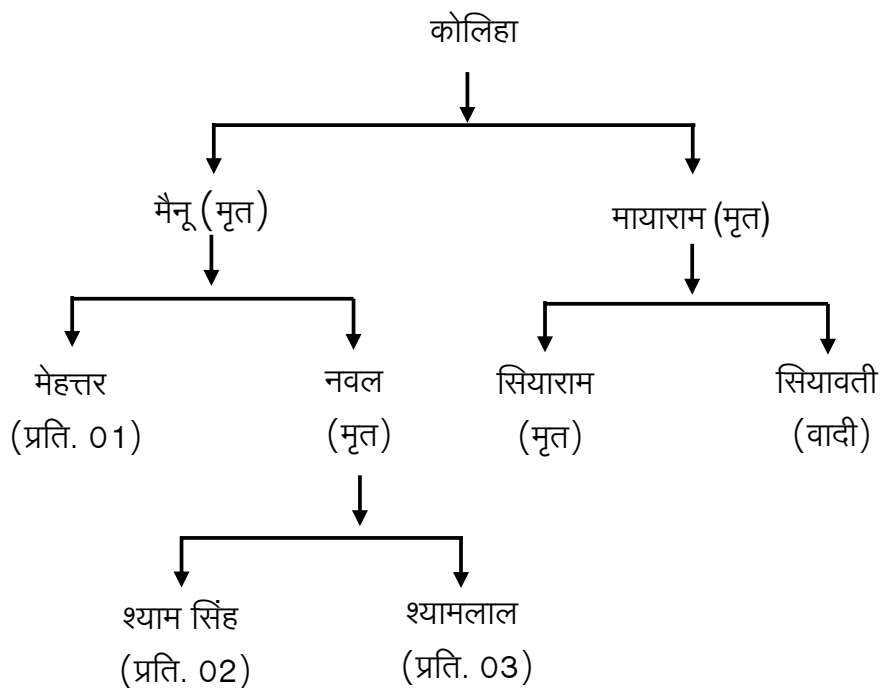
1. The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal states as under:

“Whether the finding of First Appellate Court that the Plaintiff is not the owner of the suit land is perverse ?”

2. The imperative facts required to be noticed for adjudication of this appeal are as under:

[For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) Following genealogy tree would demonstrate relationship among the parties:-



(2.2) Plaintiff - Siyawati filed a suit for declaration of title and permanent injunction stating *inter alia* that after the death of her father –Mayaram, her brother Siyaram inherited the suit property and her brother, during his life time, got the suit land recorded in her name, which was set aside by Sub Divisional Officer, at the instance of defendants. She preferred appeal against the order of Sub Divisional Officer before the Commissioner, Bastar Division, which is pending consideration. In the suit filed, she claimed that she, being the only heir of her father – Mayaram, is entitled for recovery of possession of the suit property.

(2.3) Defendants filed their written statement stating *inter alia* that suit property is joint family property of Mehttar, defendant No.1 herein & his brother's son namely Shyamsingh and Shyamlal, defendants No. 2 & 3 herein and plaintiff's brother Siyaram; they were jointly cultivating the suit land in the life time of Siyaram (brother of the plaintiff). It was further averred that in the Gond Caste, as per custom sister does not get any right in the property of her brother. It was further averred that as Siyaram died issueless, defendant No. 1 being brother and defendant No. 2 & 3 being the brother's son had inherited the suit property.

(3) The trial Court, after appreciating the order and documentary evidence available on record, decreed the suit in plaintiff's favour holding that suit property is the ancestral property of the plaintiff and the defendants have failed to prove the custom as pleaded, therefore, the plaintiff is entitled for decree of declaration of title and recovery of possession over the suit property.

(4) Defendants/respondents preferred First Appeal there-against. The First appellate court, on re-appreciation of entire evidence and material placed on record, allowed the defendants' appeal and dismissed the suit.

(5) Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellant/plaintiff in which the substantial question of law has been formulated for consideration, which has been set out in the opening paragraph of the judgment.

(6) Mr. Ramesh Kumar Sharma, learned counsel appearing for the appellant/plaintiff would submit that the first appellate court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court holding that the plaintiff is not title holder the suit property on untenable grounds.

(7) None for the respondents, though served.

(8) I have heard learned counsel appearing for the appellant and perused the judgment and decree impugned including record of both the courts below with utmost circumspection.

(9) The trial Court, on the basis of evidence available on record, particularly the evidence of Mehattar (PW-1) held that the suit land previously owned by Mayaram and after the death of Mayaram, the same was recorded in the name of Siyaram and plaintiff- Siyabati vide documents i.e. Exs.P-2 to P-4 i.e. the proceeding initiated by the defendants, it is quite evident that the defendants have admitted the property to be the plaintiff's brother – Siyaram and they have claimed the suit property as per custom stating that in the Gond caste, the sister has no share or any right in the property of her brother.

(10) It is well settled law that in order to prove the custom, particulars should be given that custom is ancient and should be established by clear and unambiguous evidence. [**See: Saligram v. Munshiram reported in AIR 1961 SC 1374 & Kunjuraman v. Mathevan reported in AIR 1971 SC 1398 & Harihara Prasad v. Balmiki Prasad, reported in AIR 1975 SC 733**].

(11) In order to prove the custom, defendant No. 1 – Mehtar examined himself as DW-1 and has stated that in the Gond Caste, sister does not get any share in the property of her brother. Likewise, Dhaniram (PW-2), in his evidence, did not say about the custom, which is prevalent in the Gond Caste. As such, except self serving statement of defendant No.1 – Mehtar, no evidence is available on record to hold that in the Gond Caste, sister does not get property of her brother and only the brother and brother's sons get the property. Thus, in the considered opinion of this Court, the trial Court has rightly held that the defendants have failed to prove custom, in which, brother's property is inherited by brother and brother's

son. The First Appellate Court has reversed the judgment and decree of the trial Court without there being any evidence on record to hold that in the Gond caste, sister does not get property of her brother, as such the first appellate Court is absolutely unjustified in interfering with well reasoned judgment and decree of the trial Court.

(12) As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently allowed, the plaintiff's suit stands decreed.

(13) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

